IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 394 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRUBHAI GHELABHAI SHAH

Versus

NUTAN NAGRIK SAHKARI BANK LTD

Appearance:

1. Special Civil Application No. 394 of 2004

MR SA DESAI for Petitioner No. 1

MR RD DAVE for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/09/2004

ORAL JUDGEMENT

1. Rule. Mr.R.D.Dave, learned advocate waives service of rule on behalf of respondent No.1. With the

consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India, the petitioner, who is a guarantor, has challenged the legality and validity of the judgment and order dated 29.11.2003 passed by the Gujarat State Co-operative Tribunal, passed in Appeal No.818 of 2002 in dismissing the same and confirming the order passed by the Board of Nominee, Ahmedabad, dated 30.7.2002 passed in Restoration Application No.63 of 2001.

3. Mr.S.A.Desai, learned advocate appearing on behalf of the petitioner has submitted that, an ex-parte judgment and award came to be passed by the Board of Nominee, Ahmedabad, against the petitioner, who was the guarantor as well as the principal debtor also. Principal debtor preferred Restoration Application No.86 of 2001, and the same came to be allowed, and the matter is at large before the Board of Nominee at Ahmedabad. Therefore, Shri Desai submitted that, when the matter is at large before the Board of Nominee, the Board of Nominee ought to have allowed the application, so far as the petitioner, who is a guarantor is concerned. He has further submitted that, under the circumstances, the judgment and order passed by the tribunal in confirming the order passed by the Board of Nominee in rejecting the restoration application is required to be quashed and set aside.

4. Mr.R.D.Dave, the learned advocate appearing on behalf of the respondent No.1 has tried to support the order passed by the tribunal as well as the order of the Board of Nominee in rejecting the restoration application. However, he could not dispute that the restoration application No.86 of 2001 filed by the principal debtor came to be allowed and the matter is at large before the Board of Nominee at Ahmedabad.

5. Heard the learned advocates appearing for the parties. Ex-parte judgment and award came to be passed against the petitioner who is a guarantor as well as principal debtor. Principal debtor submitted a restoration application, and the Board of Nominee, Ahmedabad, has allowed the restoration application and has quashed and set aside the ex-parte judgment and award qua him i.e. principal debtor, and so far as the petitioner, who is a guarantor is concerned, the restoration application is dismissed.

6. Considering the fact that the ex-parte judgment and award passed by the Board of Nominee, Ahmedabad, is set aside qua principal debtor, and the matter is at large before the Board of Nominee, Ahmedabad, an application qua the petitioner ought to have been allowed. However, in view of the fact that there is some lethargic and negligence on the part of the petitioner, the petitioner is required to pay cost to the respondent No.1-Bank.

7. Considering the aforesaid facts and circumstances of the case, and the order passed by the Board of Nominee dated 30th July, 2002, passed in restoration application No.63 of 2001 and confirmed by the tribunal vide order dated 29.11.2003 passed in Appeal No.818 of 2002 are required to be quashed and set aside and accordingly the same are hereby quashed and set aside. The judgment and award passed by the Board of Nominee, Ahmedabad, passed in Lavad Suit No.64 of 2001 is hereby quashed and set aside, and the petitioner is directed to pay cost of Rs.5,000/- to the respondent No.1 Bank. Now the matter will be decided by the learned Board of Nominee along with Lavad Suit (New No.) 2057 of 2002. The petitioner to pay the aforesaid cost of Rs.5,000/- within a period of 15 days from today to the respondent No.1 Bank.

8. In view of the fact that the Lavad Suit is of 2001, the learned Board of Nominee, Ahmedabad, is directed to expedite the suit and decide and dispose of the same in accordance with law and on merits, on giving top priority.

9. With the aforesaid observations and directions, this petition is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. is permitted.

(M.R. Shah, J.)

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